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No. 02 539

In The
Supreme Court of the United States

MARTHA DE LA CARIDAD MARTIN,
AND SAMANTHA DE TOMMASO FERREIRA,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Question One: Whether the word "person" in 18 U.S.C. § 1512(b) is limited in its meaning, as Congress intended, to a witness, victim, informant, friend of one of those three categories, or relative of one of those three categories or whether that word "person" is to be given its all-inclusive plain meaning?

Question Two: Whether a criminal defendant can be convicted of a violation of 18 U.S.C. § 1512(b)(2)(B), where the Government never proved that any of the employees corruptly persuaded by that defendant to conceal documents was a witness, victim, informant, friend of one of those three categories of persons, or relative of one of those three categories of persons?

Question Three: Whether the lower appellate court's decision, which refused to interpret a criminal statute using clear legislative history that limited the meaning of an undefined word in that statute, conflicts with the decisions of this Court that hold that the plain and ordinary meaning of a word in a statute is not conclusive of its meaning, if clear contrary legislative intent appears?

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PETITION FOR A WRIT OF CERTIORARI

The petitioners, Martha de la Caridad Martin and Samantha de Tommaso Ferreira, petition this Court to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit in this case.[1]

OPINION BELOW

The opinion of the lower appellate court is unpublished. That opinion is reproduced in the appendix to this petition at Appendix (hereafter App.) 1.

BASIS FOR JURISDICTION

The opinion of the lower court was filed on June 3, 2002. A petition for rehearing en banc was denied by the lower court on August 5, 2002. A copy of that order is reproduced in the appendix to this petition at App. 11.

This Court has jurisdiction to review the decision of a lower federal appellate court pursuant to Title 28 United States Code section 1254(1).

[1] Counsel for a third defendant-appellant below, Otacillio Rocha, has informed petitioners' counsel that Mr. Rocha has no interest in the outcome of this petition and, therefore, will not be a party in this Court. This statement is made in compliance with Supreme Court Rule 12.6.

FEDERAL STATUTORY PROVISION INVOLVED

Title 18 United States Code section 1512 provides:

Section 1512. **Tampering with a witness, victim, or an informant**

(a)(1) Whoever kills or attempts to kill another person, with intent to –

> (A) prevent the attendance or testimony of any person in an official proceeding;
>
> (B) prevent the production of a record, document, or other object, in an official proceeding; or
>
> (C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under this subsection is –

> (A) in the case of murder (as defined in section 1111), the death penalty or imprisonment for life, and in the case of any other killing, the punishment provided in section 1112; and
>
> (B) in the case of an attempt, imprisonment for not more than twenty years.

(b) Whoever knowingly uses intimidation or physical force, threatens or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to –

(1) influence, delay or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to –

(A) withhold testimony, or withhold a record, document, or other object from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which a person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings; shall be fined not more than $250,000 or imprisoned not more than ten years, or both.

(c) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from –

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined not more that $25,000 or imprisoned not more than one year, or both.

(d) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(e) For the purpose of this section –

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(f) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance –

(1) that the official proceeding before a judge, court, magistrate, grand jury, or government agency is before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

(2) that a judge is a judge of the United States or the law enforcement officer is an officer or employee of the

Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

(g) There is extraterritorial Federal jurisdiction over an offense under this section.

(h) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

(i) If the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

STATEMENT OF THE CASE

1. The Relevant Facts

The two petitioners were charged and tried on only one count of a thirteen-count superseding indictment. Seven other codefendants, including a business named Compubras Export & Import Corporation (hereafter "Compubras"), were charged with criminal violations involving federal income tax evasion. Based on fake corporate sales invoices and a double set of books, this business filed a false corporate tax return for the business years of 1992 and 1993. The three owners of that business also filed false individual tax returns. Those three owners – Domingos Trofino, Geraldo Figueiredo, and Heleno

Figueiredo – fled this country and were never tried on this superceding indictment.

The two petitioners, Ms. Martin and Ms. de Tommaso, were only charged in Count Thirteen of the superseding indictment. The precise charge submitted to the jury was: "On or about July 27, 1997, at Miami, Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants, MARTHA DE LA CARIDAD MARTIN and SAMANTHA DE TOMMASO FERREIRA, did knowingly corruptly persuade and attempt to corruptly persuade other persons, that is employees of COMPUBRAS EXPORT & IMPORT CORPORATION, with intent to cause and induce them to alter, destroy, mutilate and conceal an object, to wit: business records, with intent to impair the object's integrity and availability for use in an official proceeding in violation of Title 18, United States Code, Section 1512(b)(2)(B)."

Both petitioners were convicted on this single charge. Petitioner Martin was sentenced to serve four months imprisonment and fined $6,000. Petitioner de Tommaso was sentenced to serve five months of imprisonment and received no fine because of inability to pay a fine.

The testimony elicited to convict petitioner Martin and petitioner de Tommaso at their trial, taken in a light most favorable to the Government, is the following:

Compubras was in the business of selling electronics and computer hardware. The owners of Compubras devised a scheme to avoid payment of federal corporate income taxes. Beginning in the year 1991, several identified employees of Compubras generated false invoices that underreported the true sales of electronic equipment.

False federal income tax returns were filed by Compubras for the fiscal tax years of 1992 and 1993.

Neither petitioner Martin nor petitioner de Tommaso were identified at trial either as one of those employees who created those false invoices or as one of those employees involved in underreporting income to the I.R.S. Petitioner Martin began working at Compubras in November of 1992. Ms. Martin initially worked in the accounting department and knew that false invoices were being created, although Martin did not engage in the manufacturing of those fraudulent documents. Indeed, a few months after she began work in the accounting department, one of the owners had Martin reassigned to other work outside that department, because that criminal owner feared that Martin might talk and expose this criminal tax fraud scheme.

The Internal Revenue Service (I.R.S.) noticed that Compubras made an unusually large amount of cash purchases. As a result, the I.R.S. decided to do a civil audit of the year 1992 and the year 1993 tax returns of that corporation. An I.R.S. agent began an investigation in April of 1994 and requested records from Compubras. After a preliminary review of the records provided by Compubras, this case was turned over to the criminal investigation division of the I.R.S. Finally, at 8:30 a.m. on June 27, 1997, the I.R.S. raided Compubras' main downtown Miami, Florida office to serve a search warrant seeking business records as part of its criminal investigation of possible income tax fraud on the part of Compubras and its owners. The service of that warrant generated the particular factual situation which was the basis for this single criminal charge against these two petitioners. As

already noted, the date of the only crime charged against these two petitioners was June 27, 1997.

The main Compubras sales store, at which all purchases were made, was located in downtown Miami, Florida. That business also had an office-warehouse near the airport. This second location handled the return of defective computer merchandise that was sent to Miami by Compubras' customers. At some time prior to the I.R.S. raid, the false invoices were moved from the downtown office and stored at that airport location.

Petitioner Martin was at that airport office on June 27, 1997, when the I.R.S. raid on the main downtown Compubras office occurred. On that date, petitioner de Tomasso, who was also a supervisor of shipping at that office-warehouse, was at the downtown office and saw the presence of I.R.S. agents.

At approximately 4:00 p.m., the bookkeeper named de Almeida, one of the owners, and petitioner de Tommaso had a meeting at the bookkeeper's house. Petitioner de Tommaso stated that a second Compubras owner ordered that the false invoices, which were then stored at the warehouse location, be taken from that warehouse and thrown away. Petitioner de Tommaso and the bookkeeper drove to the warehouse, arriving about 5:00 p.m. Soon, petitioner de Tommaso's husband and an individual named Cleto Verdolin arrived. The bookkeeper became afraid, borrowed Verdolin's automobile, left this warehouse and never returned.

Petitioner Martin was not at the bookkeeper's house, and, to that bookkeeper's knowledge, petitioner Martin did not hear that one of the Compubras owners ordered that the false invoices be destroyed. Petitioner Martin was not

at the warehouse, when this bookkeeper left that warehouse.

Four Compubras employees, who were at the warehouse, testified at the trial. Those four persons were Cleto Verdolin, Marcelo Machado, Juan Versage, and Rolando Macias. **None** of these four individuals was involved in the creation of the false invoices. **None** of these four individuals testified that he was involved in the scheme to evade corporate income taxes.[2]

Mr. Verdolin initially was present at the downtown Compubras office, when the I.R.S. executed the search warrant. Mr. Verdolin left and went home. While at home, Mr. Verdolin received a telephone call from petitioner de Tomasso and was requested to go to the warehouse, because a shipment had to go out. Mr. Verdolin had never before gone to that warehouse and normally did not do work at that warehouse. When he arrived, Mr. Verdolin did not know that he would be asked to do anything wrong. Others, including petitioners de Tommaso and Martin, were already there. A Compubras truck was already there. Verdolin helped load file cabinets and boxes onto that truck. "[Petitioner] Martha [Martin] was basically telling us which cabinet to take and which box to

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[2] Other persons, who did not testify at this trial, were at the warehouse at this time. Those persons were identified as Gilson Ogleari, Versage's step-father named Eduardo Velez, Robert Day and Johnnie Veliz. The Government elicited **no** evidence that those non-testifying individuals either were in any way involved in the creation of the false invoices or were in any way involved in the scheme to evade corporate income taxes using those false invoices. Likewise, there was **no** evidence that any of those additional men knew what was inside the file cabinets being loaded on that truck.

take. . . . " Those file cabinets had been inside the office at the warehouse. Petitioner de Tommaso was talking on a cellular phone and appeared nervous. Petitioner de Tommaso also ordered those employees to load the file cabinets. Mr. Verdolin was told by Gilson Ogleari, that one of the store's owners ordered Ogleari to drive the truck to the warehouse. After the loading was complete, petitioner de Tommaso ordered Mr. Verdolin and Gilson Ogleari to drive that truck to Kissimmee, Florida. There, Verdolin and Ogleari dumped all of the records, which had been contained in those file cabinets and boxes, at a dump site.

Marcelo Machado was at the downtown office to get paid on June 27, 1997, when the I.R.S. served its search warrant. Machado went home. About 2:00 p.m. Mr. Machado received a call from petitioner de Tommaso and was requested to help at the warehouse. Mr. Machado normally did not go to the warehouse, except to fix computers. Machado was asked to load boxes on a truck located at the warehouse. Petitioner de Tommaso was on the phone and giving instructions to carry boxes onto that truck. Ms. de Tommaso was nervous and asked everyone to work faster. According to Mr. Machado, petitioner Martin was the person who selected the boxes to be carried onto that truck.

Juan Versage was at the main office to get paid on June 27, 1997, when the I.R.S. paid its visit. Versage went home and met his stepfather, Eduardo Velez, and Rolando Macias. After Macias received a telephone call, those three persons proceeded to the Compubras warehouse. Mr. Versage believed that these men were going for overtime work in order to assist in a shipment to Paraguay. Petitioner Martin directed those three to load files onto the truck. The truck was almost full, when they began to

assist in the loading. Versage became concerned that the federal agents might come and told his stepfather and Mr. Macias that all three of them should leave in order to avoid getting in trouble. Those three came up with an excuse to leave and never returned.

On June 27, 1997, Rolando Macias attempted to go to work at Compubras, but was told that he could not enter the main office. Eventually, Macias went to the home of his friend, Mr. Versage. A call was received and Macias, Versage and Versage's stepfather, Eduardo Velez, were requested to go to the Compubras warehouse. Normally, Macias did not work at the warehouse. Macias had no idea why he was wanted at that warehouse. Others, including petitioner Martin and petitioner de Tommaso, were already at the warehouse, when he, Versage and Velez arrived. Macias saw that group loading file cabinets onto a truck. Mr. Macias actually did not know what was inside those file cabinets. Mr. Macias became concerned about what was being done at the warehouse. Macias left with Mr. Versage and Mr. Velez.

Regarding their instructions to load the file cabinets, Mr. Verdolin and Mr. Machado both testified that petitioner Martin never offered them any money, never threatened them and never had to persuade them to load those files onto the truck.

The truck was driven to a landfill dump site located in Kissimmee, Florida. Approximately two tons of paper were unloaded into that waste depository. Those papers were subsequently covered over by other loads of garbage from other sources. Although federal agents eventually went to that dump site to recover those papers, it was almost

impossible to then locate and dig up those particular items.

There was **no** evidence presented by the Government at this trial that any of the persons, who loaded these file cabinets onto the truck, were persons who assisted in the preparation of those false invoices in the years 1991 to 1993 or who had any personal knowledge about the scheme to defraud the Government of corporate income taxes for the years 1992 and 1993.

Cleto Verdolin did not arrive in the United States until the year 1996. Mr. Verdolin only worked at Compubras from January 1996 until June of 1998. Thus, Mr. Verdolin could not have been involved in the creation of the false invoices, which were contained in the file cabinets. Mr. Verdolin did not do anything with the accounting department and only heard rumors that Compubras had problems with the I.R.S. from a long time ago. Mr. Verdolin did not engage in any criminal behavior and did not have any knowledge that Compubras was committing any crimes. Moreover, Mr. Verdolin testified that he had to follow petitioner Martin's instructions, because he, Verdolin, did not know what file cabinets to load on the truck. Verdolin never knew the contents of the file cabinets and boxes that he dumped until he arrived at Kissimmee and dumped the contents from inside those containers.

The bookkeeper, who was intimately involved in the creation of the false invoices, the scheme to evade federal taxes, and the concealment of those invoices years later in 1997, stated that Mr. Verdolin was not involved in the coverup. Because this bookkeeper did not advise Verdolin and Gilson Ogleari what papers were to be disposed of and

what should be kept, Verdolin dumped into the landfill everything that had been loaded onto the truck.

Marcelo Machado began working for Compubras in the year 1990. However, his work was limited to cleaning the store and assembling computers. Machado left Compubras in 1994 and returned to work there in 1996. At that time, Machado worked in the technical department assembling and testing computers. Mr. Machdo never worked in the accounting department. Thus, Mr. Machado had no personal knowledge of the tax fraud scheme. At the time he was loading the boxes, Mr. Machado did not know what was inside them. Mr. Machado never knew about the 1994 federal tax audit other than through overhearing others talk. Thus, Machado was surprised on June 27, 1997 when he saw the federal agents at Compubras.

Juan Versage began working for Compubras as a stock person either in the year 1994 or the year 1995. Versage then switched to sales. Mr. Versage testified that he, Versage, did not have any involvement in the preparation of fake invoices to deceive the I.R.S.

Rolando Macias became employed by Compubras in the year 1994. His job was to ship defective computer parts for repair. Thus, Mr. Macias could not have been involved in the creation of the false invoices, which were dumped at the landfill.

The Government never established that any of the persons, whom defendant Martin instructed to load the file cabinets on the truck, were involved in the crime of income tax evasion by Compubras and its owners. None of these directed employees of Compubras knew that the file cabinets, which they were told to load on the truck on June 27, 1997, contained false invoices regarding the

federal taxes due to the I.R.S. for the tax years 1992 and 1993.

The Government also established that petitioner Martin gave two statements to federal investigators.

On July 9, 1998 – about one year after the I.R.S. raid and the destruction of the false invoices, I.R.S. agent Molero interviewed petitioner Martin. On that date, Ms. Martin stated the following: Ms. Martin admitted that, when she worked in the accounting department, Ms. Martin knew that bookkeeper de Almeida was structuring deposits to avoid federal currency reporting requirements. While working at the airport on Friday, June 27, 1997, Martin's immediate superiors were bookkeeper de Almeida and one of the owners of Compubras. On that day, Ms. Martin received a telephone call and was instructed to go home. It was not until Monday, when defendant Martin returned to the warehouse, that Martin noticed as missing the file cabinets, which were originally from the downtown office and which were then being stored there. Ms. Martin stated that she, Martin, did not know what happened to those file cabinets.

Petitioner Martin was arrested on October 12, 2000. At that time, Ms. Martin made the following second statement: On the day of the raid, petitioner Martin received a call from the main office and was told to close the warehouse. Ms. Martin drove downtown and saw that police were at the main office of Compubras. Martin went to her mother's home. Bookkeeper de Almeida called Martin and requested Martin to open the warehouse. Ms. Martin did as told. While she was at the warehouse, several Compubras workers showed up. At that time, bookkeeper de Almeida gave all of the instructions to those

employees to load particular files on the truck. Petitioner Martin stated that she, Martin, did not give any instructions. Ms. Martin concluded that those records were records that Compubras did not want the federal government to see. Martin also stated that she, Martin, had previously lied to I.R.S. agent Molero, because she, Martin, did not want to get into trouble.

2. The Ruling Of The Lower Court

Petitioner Martin[3] argued that the facts elicited at her trial did not support a conviction for the only crime for which she was indicted. Petitioner Martin was specifically charged with obstruction of justice on the theory that petitioner Martin corruptly persuaded employees of Compubras to conceal business records with the intent to impair the integrity and availability of those business records for use in an official proceeding in violation of Title 18 United States Code section 1512(b)(2)(B).

Petitioner Martin asserted that Congress did not intend its use of the word "person" in this statute to be all-encompassing.[4] Rather, Congress expressly intended that this statutory provision be limited to conduct by a perpetrator against witnesses, victims, informants, relatives of those three classes of persons, or friends of those three

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[3] The lower appellate court granted petitioner de Tommaso's motion to adopt Ms. Martin's argument as part of Ms. de Tommaso's appeal.

[4] The basis for this argument will be expanded in the subsequent section of this petition regarding reasons to grant this petition. It is tersely stated here for the purpose of understanding what the lower court ruled.

classes of persons. Because of that fact, the evidence presented at her trial did not justify petitioner Martin's conviction for this particular crime.

Here, those employees of Compubras, who were directed on June 27, 1997 to conceal the false invoices, were employees who knew nothing about the facts of the scheme to evade federal corporate income taxes for the years 1992 and 1993. Those present employees, who were loading the truck on June 27, 1997, had no participation in production of those false invoices years before. Those individuals could not provide the Government with testimony about the relationship of the contents of those file cabinets to the 1992 and 1993 crimes of federal tax evasion by Compubras. Those false invoices were not related to anything any of those men did in the years 1992 and 1993. These particular men had no knowledge to impart at the official proceeding for which those false invoices were allegedly relevant. Those men did not know what was in the file cabinets that they were asked to load on the truck.

Additionally, those particular employees were not shown to have either a familial relationship or a friendship with either the actual witnesses to those tax crimes or the actual witnesses to the manufacturing of those false invoices. Obviously, those employees whom petitioner Martin purportedly instructed at the warehouse were neither victims of the corporate tax evasion scheme nor informants as to that federal crime.

Petitioner Martin did concede that the facts elicited at this trial could have sustained a charge of misprison of a

felony, a violation of Title 18 United States Code section 4, although petitioner Martin had not been charged with that particular crime.[5]

The lower court rejected petitioner Martin's argument solely on the basis of the reasoning contained in a prior Eleventh Circuit opinion[6] *United States v. Veal*, 153 F.3d 1233 (11th Cir. 1998). Quoting from *Veal*, the lower court opined in this case that "there is no ambiguity in 'another person' which is easily understood to mean any person, regardless of whether he possessed knowledge of the commission or possible commission of a federal crime."

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[5] Misprision of a felony has been a federal crime since its enactment by the first Congress of the United States. That crime involves a person, other than the principal, who acquires knowledge of the crime, fails to notify authorities and engages in some affirmative act to conceal the crime of the principal. *United States v. Stuard*, 566 F.2d 1 (6th Cir. 1977); *Bratton v. United States*, 73 F.2d 795 (10th Cir. 1934). This statute includes acts of suppressing or hiding evidence of the crime for the principle perpetrator. *United States v. One Star*, 979 F.2d 1319 at 1322 n. 4 & 5 (8th Cir. 1992); *United States v. Davila*, 698 F.2d 715 at 718 (5th Cir. 1983), *Bratton v. United States*, 73 F.2d 795 at 797 (10th Cir. 1934).

That crime of misprision of a felony only carries a maximum penalty of three years imprisonment. 18 U.S.C. § 4. The crime for which petitioner Martin stood convicted, 18 U.S.C. § 1512(b)(2)(B), carried a maximum term of ten years incarceration.

[6] Binding Eleventh Circuit law provides that each succeeding panel is bound by the holding of the first panel to address an issue of law, unless and until overruled en banc, or by the Supreme Court – even if convinced that the prior holding is wrong. *United States v. Goldin Indus., Inc.*, 219 F.3d 1268 at 1270 n. 2 (11th Cir. 2000) (en banc); *United States v. Steele*, 147 F.3d 1316 at 1317-1318 (11th Cir. 1998) (en banc).

The defendants in *Veal*, *supra*, argued that state law enforcement officers were not included within the statutory phrase "another person," as those words were used in 18 U.S.C. § 1512(b)(3). *Veal* resolved its legal issue by engaging in statutory construction. For present purposes, the pertinent reasoning of *Veal* must be treated here as having been adopted in its totality in the opinion that decided this case. The legislative history, upon which petitioner Martin relied as decisive, was ignored by the *Martin* panel based on the following statement of law in *Veal* that immediately preceded the portion of *Veal* quoted as decisive in the lower court's opinion in this case:[7]

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[7] The legislative history upon which petitioner Martin relied will be stated in the next sub-section of this petition. It is ironic that had the *Veal* panel actually examined that legislative history relied on by petitioner Martin, that panel would have discovered that the facts of *Veal* would have been within the legislative intent of Congress for the words "another person." The same was not true for the facts in petitioner Martin's case.

In *Veal*, the State of Florida law enforcement officers that were mislead *were* witnesses to the particular crime about which the *Veal* defendants engaged in misleading conduct. Originally, the misleading conduct was made to Florida police officers, who were investigating a death. Federal agents did not open a federal investigation until after the misleading conduct occurred. As concerned the *federal* crime being investigated by the federal agents, the Florida law enforcement officers were only witnesses. Those Florida law enforcement officers were not acting as agents of the Federal Government, when the misleading conduct occurred. In that context, the false statements, which were uttered to the Florida law enforcement officers, made those officers witnesses as to those false statements in terms of the federal crime that was being investigated by the Federal Government. False exculpatory statements have always been evidence of guilt. The fact that those statements were heard by a Florida law enforcement officer makes them no different than if those false statements were made to a civilian.

(Continued on following page)

* * * Review of legislative history is unnecessary "unless a statute is inescapably ambiguous." *Solis-Ramirez v. United States Dep't of Justice*, 758 F.2d 1426, 1430 (11th Cir. 1985) (per curiam); *see United States v. Rush*, 874 F.2d 1513, 1514 (11th Cir. 1989) (stating that, where statutory language is clear, we will not create an ambiguity with legislative history). Therefore, we deem the plain language of the statute to be *conclusive* as clearly expressing legislative intent, unless the resulting application would be "absurd" or "internal inconsistencies" must be resolved. *See United States v. Turkette*, 452 U.S. 576, 580. . . .

The application of these principles exposes the infirmities in the arguments by Veal, Watson, Haynes and Camacho. To reach an analysis of legislative history, they *first must show* that "another person" is ambiguous and requires the aid of legislative history for interpretation. As the district court found, there is no ambiguity in

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The critical holding in *Veal* that is *consistent* with petitioner Martin's position is the following:

> Nothing in the statutory language or the caption contains this artificial definition that they advance. The title states: "witness"; it does not state or require that the witness have pre-existing knowledge. Significantly, police officers, as a consequence of their occupation, become witnesses as a matter of course in each investigation in which they are involved. Thus the terms used in the statutory title do not exempt police officers. The fact that Congress did not use restrictive language in drafting § 1512(b)(3) confirms our logical conclusion that "witness," as used in the caption, can be interpreted to encompass state investigators.

United States v. Veal, 153 F.3d at 1246.

> "another person," which is easily and commonly understood to mean *any* person, regardless of whether he possessed knowledge of the commission or possible commission of a federal crime from being an eyewitness or investigating official. * * *

United States v. Veal, 153 F.3d at 1245 (emphasis added).

REASONS FOR GRANTING THE WRIT

In light of the corporate scandals that have recently shaken this Country, the obstruction of justice statute, 18 U.S.C. § 1512, has taken on added importance in the Government arsenal of weapons to combat white collar crime. The withholding and shredding of records led to the destruction of the accounting firm of Arthur Andersen, LLP as a result of the Government's prosecution of that accounting firm. The indictment in that prosecution was predicated on the same statutory provision, 18 U.S.C. § 1512(b), relied on to convict petitioners Martin and de Tommaso. This statute has a broad reach, applying to all kinds of "official proceedings," as that phrase is defined in Title 18 United States Code section 1515(a)(1).

This Court has never construed any provision of Title 18 United States Code section 1512. This Court only made reference to that particular statute in *United States v. Aguilar*, 515 U.S. 593 (1995), when construing the reach of another statute involving obstruction of justice, 18 U.S.C. § 1503, and limiting the reach of that latter statute.

The sufficiency of the evidence to convict petitioners Martin and de Tommaso depends on the Congressionally-intended scope of the word "person" as used in this particular statute. That word was not expressly defined by Congress within the statute, itself. 18 U.S.C. § 1515.

The particular criminal provision at issue in this case[8] was enacted in the year 1982. Pub. L. 97-291 § 4, 96 Stat. 1248-1250 (1982). Since 1982, Congress has never altered the word "person" in that statute, although this statute has been amended as to other matters. There is no question that the wording of this statute was designed to cover not only the mental impressions of witnesses, but the physical evidence that those witnesses controlled.

The title of the original enactment of Congress that created section 1512 was the "Victim and Witness Protection Act of 1982." Section 2 of that legislation contained Congressional findings and declarations of purpose. This legislation was expressly enacted to promote the cooperation of victims and witnesses. One of the purposes of this legislation was "to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process." Pub. L. 97-291, 96 Stat. 1248-1249 (1982). The newly created section 1512 was expressly identified as covering "Tampering with a witness, victim, or an informant." Pub. L. 97-291 § 4, 96 Stat. 1249 (1982).

The solitary legislative report that preceded submission of this legislation to Congress was Senate Report 97-532, which emanated from the Senate Judiciary

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[8] The present 18 U.S.C. § 1512(b) was originally designated in the year 1982 as 18 U.S.C. § 1512(a).

Committee. That report is reprinted in its entirety at 1982 U.S.C.C.A.N. 1515-2551.

The following statements in that report expose the actual intention of Congress in terms of the scope of this statute. The express purpose of this legislation was "to strengthen existing legal protections for victims and witnesses of Federal crimes." "The victim or witness has little hope of protection from the government if he is harassed or threatened. . . . " Senate Report 97-532 at pages 9-10. Title Two of this act was labeled "Protection of Victims and Witnesses from Intimidation." Senate Report 97-532 at page 14. Regarding the section at issue here, the report reads: "Section 1512 applies to offenses against witnesses, victims or informants which occur before the witness testifies or the informant communicates with law enforcement officers;. . . . " The summary for section 1512 reads: "Section 1512 provides criminal penalties for the intimidation against not only witnesses (current law) but victims as well." Senate Report 97-532 at page 14.

This Senate Report then states what Congress intended by the use of the word "person" in this statute. The pertinent parts of this Report are quoted here:

> *3. Problems of Current Law*
>
> * * *
>
> * * *
>
> Under current law there is an ambiguity about who would constitute a "witness." Generally, court decisions define "witness" to mean a person "expected" to testify in a court proceeding. Therefore, it is questionable whether title 18 as presently written would protect a witness who is

able to provide information about a crime but who is not necessarily expected to testify because the testimony would either constitute hearsay (often the case with informants), would be privileged, or would otherwise be inadmissible. The scope of the offense should not be limited by concerns about the status of the victim as a person who has testified or will be able to testify in court. Rather, the offense should be addressed to punishing the acts of intimidating or injuring **a person because of his knowledge about the commission of a crime**. Therefore, Title II would include potential witnesses and informants, and would preclude a defense that the testimony the witness would give would not be admissible. * * *

* * *

4. Provisions of the bill, as reported

A. Elements of the offense.

* * *

* * *

In subsection (a)(1) **the term "witness" is not directly mentioned. A useful consequence of dropping this term and talking in terms of** threats to induce action by **any person is that the scope of the offense extends to** threats that are made, **not against the witness himself, but against his family or anyone else of interest to him.** * * *

Senate Report 97-532 at pages 15-16 (bold emphasis added).

Based on this legislative history, the construction of the word "person" asserted by the petitioners would render

the evidence presented at petitioners' trial legally insufficient to sustain their conviction on the charged violation of 18 U.S.C. § 1512(b)(2)(B). Stated simply, a defendant could not be convicted of a violation of that statute by throwing an incriminating document into a wastebasket and directing a latter-appearing cleaning lady to throw out that wastebasket containing the incriminating document – no matter how criminal that defendant's state of mind.

The lower court's opinion conflicts with several cases from this Court on the decisive principle of statutory construction. That principle of construction is especially important in the context of construing a criminal statute to determine whether a criminal defendant should be jailed. It is any individual's nightmare to be imprisoned for acts that the legislature did not intend to constitute the crime for which that man or woman was charged by the executive branch of government.

The lower appellate court ignored legislative history supporting the position of petitioner Martin. That court, relying on a portion of the reasoning in *United States v. Veal*, 153 F.3d 1233 (11th Cir. 1998) deemed decisive in this case, followed there-announced rules of law that legislative history is only to be consulted if a statute is inescapably ambiguous on its face and, as a corollary, that the plain language of a statute is conclusive as clearly expressing legislative intent unless the resulting application of that statute would be absurd or internally inconsistent. Worse, that lower court miscited this Court's opinion in *United States v. Turkette*, 452 U.S. 576 at 580 (1981) to support a statement of the law different than that actually contained in *Turkette*. According to this lower appellate court, the actual intention of Congress is irrelevant if a word has a common meaning.

In *United States v. Turkette*, 452 U.S. 576 at 580 (1981) this Court actually stated: "If the statutory language is unambiguous, *in the absence of 'a clearly expressed legislative intent to* the *contrary*, that language must *ordinarily* be regarded as conclusive.'" Using a slightly different choice of words, this Court recently reaffirmed this rule. "In the absence of an indication to the contrary, words in a statute are assumed to bear their 'ordinary, contemporary, common meaning.'" *Nat'l R.R. Passenger Corp. v. Morgan*, 122 S.Ct. 2061 at 2070 n.5 (2002). This Court stated this binding principle of law more clearly and completely in *Watt v. Alaska*, 451 U.S. 259 at 265-266 (1981) (emphasis added):

> '[t]he starting point in every case involving construction of a statute is the language itself.' [citations omitted]. But ascertainment of the meaning apparent on the face of a single statute need not end the inquiry. [citations omitted]. This is because the plain-meaning rule is 'rather an axiom of experience than a rule of law, and **does not** preclude consideration of persuasive evidence if it exists.' [citation omitted]. The circumstances of the enactment of particular legislation may persuade a court that Congress did not intend words of common meaning to have their literal effect. [citations omitted].

Moreover, this concept has been repeatedly stated by this Court in various forms and when addressing sundry situations. The intention of Congress will prevail even against the letter of the statute. *Hawaii v. Mankichi*, 190 U.S. 197 at 212 (1903). In a criminal case analogous to petitioner Martin's case, *United States v. Carbone*, 327 U.S. 633 at 637 (1946), this Court stated, "not every person or act falling within the literal sweep of the

language of the Kickback Act necessarily comes within its intent and purpose." "In matters of statutory construction the duty of this Court is to give effect to the intent of Congress, and in doing so our *first* reference is of course to the literal meaning of words employed." *United States v. Flora*, 357 U.S. 63 at 65 (1958) (emphasis added). Even the most basic general principles of statutory construction must yield to clear contrary evidence of legislative intent. *Nat'l R.R. Passenger Corp. v. Nat'l Assoc. of R.R. Passengers*, 414 U.S. 453 at 458 (1974). A thing may be within the letter of a statute and yet not within that statute, because not within its spirit, nor within the intention of its makers. *California Fed. Sav. & Loan Assoc. v. Guerra*, 479 U.S. 272 at 284 (1987).

In this case, the rule of law relied on by the lower appellate court in this case does more than conflict with the pronouncements of this Court. The lower appellate court misstates this Court's statements of the applicable principle of law. The plain language of a statute **is not** conclusive of Congressional intent, only absent a showing of ambiguity. This conflict carries the potential of the incarceration of innocent people in a myriad of circumstances, given the breadth of Title 18 United States Code section 1512. There is no principal of law that the true intent of Congress can be ignored. Indeed, all statutory interpretation has as its goal the fulfillment of the intent of Congress.

In this case, the evidence presented by the Government established that the employees of Compubras, whom petitioner Martin was to have "corruptly persuaded" to take the file cabinets onto the truck, were not witnesses to either Compubras' income tax evasion crimes or the creation of the false invoices contained in those file

cabinets. Those employees were not family or friends of witnesses to those tax evasion crimes or the manufacturing of the false invoices. Obviously, those employees were neither victims of the tax evasion crime nor informants as to those federal crimes. Consequently, petitioner Martin's argument should have prevailed. That woman should not face imprisonment and a fine for violating Title 18 United States Code section 1512(b)(2)(B). Congress did not intend to cover petitioner Martin's conduct through this particular statute.

CONCLUSION

For the above stated reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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Order Denying Rehearing And Rehearing En Banc..... App. 11

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-11847
Non-Argument Calendar

D.C. Docket No. 99-00718-CR-ASG

UNITED STATES OF AMERICA,

Plaintiff-Appellees,

versus

MARTHA DE LA CARIDAD MARTIN,
OTACILLIO ROCHA,
SAMANTHA DE TOMMASO FERREIRA,

Defendants-Appellants.

Appeals from the United States District Court for the Southern District of Florida

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(Filed June 3, 2002)

Before BLACK, CARNES and FAY, Circuit Judges.

PER CURIAM:

Martha de la Caridad Martin appeals her four-month sentence for tampering with a witness, 18 U.S.C. § 1512(b)(2)(B). Otacillio Rocha appeals his 18-month sentence imposed after a jury trial for conspiracy to defraud the Internal Revenue Service (IRS), in violation of 18 U.S.C. § 371. Samantha De Tommaso appeals her

conviction and her five month sentence for tampering with a witness, 18 U.S.C. § 1512(b)(2)(B).

On appeal, Martin argues that the evidence was legally insufficient to convict her of violating 18 U.S.C. § 1512(b)(2)(B). Specifically, Martin argues that, at most, the evidence at trial demonstrated that she was guilty of "misprision of a felony, 18 U.S.C. § 4", an offense for which she was not charged. The reason for this, Martin argues, is that Congress did not intend that § 1512(b)(2)(B) apply to the facts of this case because the word "person", as found within § 1512(b)(2)(B), was intended to mean only "victims" and "witnesses." As such, her alleged acts of corrupting employees of Compubras to destroy evidence should not be covered by this statute. Lastly, Martin argues that since none of the Compubras employees were "witnesses" to either the income tax evasion crimes or the creation of false invoices, she cannot be convicted under § 1512(b)(2)(B).

We review a challenge to the sufficiency of the evidence *de novo*, viewing the evidence in the light most favorable to the government. *United States v. Calderon*, 127 F.3d 1314, 1324 (11th Cir. 1997), *cert. denied*, 522 U.S. 1133, 523 U.S. 1033, and 523 U.S. 1144 (1998). We accept all reasonable inferences which support the verdict, and will affirm the conviction if a reasonable trier of fact could conclude that the evidence establishes guilt beyond a reasonable doubt. *United States v. McDowell*, 250 F.3d 1354, 1364-65 (11th Cir. 2001) (citing *United States v. Mieres-Borges*, 919 F.2d 652, 656 (11th Cir. 1990) (quotation marks omitted)).

The statute at issue, 18 U.S.C. § 1512(b)(2)(B), states, in part:

> (b) Whoever knowingly uses intimidation or physical force, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to –
>
> (2) cause or induce any person to –
>
> (B) alter, destroy, mutilate, or conceal an object with intent to impair the objects integrity or availability for use in an official proceeding;

In *United States v. Veal*, 153 F.3d 1233, 1253 (11th Cir. 1998), *cert. denied*, 526 U.S. 1147 (1999), we discussed the meaning of the term "another person" in the context of 18 U.S.C. § 1512(b). After reviewing the rules of statutory interpretation, we held, in relation to § 1512(b), that "there is no ambiguity in 'another person' which is easily and commonly understood to mean *any* person, regardless of whether he possessed knowledge of the commission or possible commission of a federal crime . . . ". *Id.*

We conclude that there was sufficient evidence to prove beyond a reasonable doubt that Martin corruptly persuaded any person within the meaning of § 1512(b).

On appeal, Rocha argues that the district court erred in applying a three-level enhancement, pursuant to U.S.S.G. § 3B1.1(b), for his supervisory role in the offense. Specifically, Rocha argues that there is no evidence that he "supervised anybody in criminal activity, only that he oversaw the keeping of the cash receipts journal." He further argues that there was no evidence that he directed Campanella to make false invoices, that the purpose of the enhancement is to punish those who have higher criminal

responsibility, as evidenced by a greater share of profits, which is not true of him, and that the district court made no specific findings regarding who he had supervised and in what activity he supervised them.

We will reverse the district court's determination of a defendant's role in the offense only if the determination was clearly erroneous. *United States v. Jiminez*, 224 F.3d 1243, 1250-51 (th [sic] Cir. 2000), *cert. denied*, 122 S.Ct. 620 (2001). Pursuant to U.S.S.G. § 3B1.1(b), a three-level enhancement is permitted "[i]f the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive . . . ". The assertion of control or influence over one individual is enough to support an enhancement under § 3B1.1. *See Jiminez*, 224 F.3d at 1251.

We conclude that, because the evidence demonstrated that Rocha supervised another employee in criminal actions that were part of the conspiracy, the district court did not clearly err in applying a three-level enhancement pursuant to U.S.S.G. § 3B1.1(b).

Rocha next argues that the district court erred by engaging in impermissible double counting by applying a two-level enhancement for obstruction of justice, U.S.S.G. § 3C1.1. Specifically, Rocha argues that since the conduct underlying his conviction is identical to the conduct upon which the district court based the obstruction of justice enhancement, this enhancement constituted impermissible double counting. According to Rocha, the district court's application of § 3C1.1, for obstruction of justice, increased his punishment on account of a harm that had

already been fully accounted for by application of § 2T1.9, the specific offense guideline.

Whether the cumulative enhancement of a sentence under two separate guideline provisions constitutes impermissible double counting presents a question of law that this Court reviews *de novo*. *United States v. Humber*, 255 F.3d 1308, 1311 (11th Cir. 2001). In *United States v. Matos-Rodrigquez* [sic], 188 F.3d 1300, 1309 (11th Cir. 1999), *cert. denied*, 529 U.S. 1044 (2000), we held that "[i]mpermissible double counting occurs only when one part of the Guidelines is applied to increase a defendant's punishment on account of a kind of harm that has already been fully accounted for by application of another part of the Guidelines." Double counting during sentencing is permissible if the Sentencing Commission intended the result, and if the result is permissible because each section concerns conceptually separate notions related to sentencing. *Id.* at 1310 (quoting *United States v. Adeleke*, 968 F.2d 1159, 1161 (11th Cir. 1992)). Moreover, we presume that the Commission intended to apply separate guidelines sections cumulatively unless specifically directed otherwise. *Id.*

Section 3C1.1 provides for a two-level enhancement if the defendant willfully obstructs the investigation, prosecution, or sentencing of an offense. As an example of such conduct, application note 4(c) lists "producing or attempting to produce a false, altered, or counterfeit document or record during an official investigation or judicial proceeding." U.S.S.G. § 3C1.1. app. n.3 (1992). Moreover, application note 6 lists the offenses under which the obstruction of justice enhancement is not to be applied. U.S.S.G. § 3C1.1 app. n.6 (1992). The offense for which Rocha was

convicted, U.S.S.G. § 2T1.9, is not one of the offenses listed in note 6.

We conclude that, because Rocha's underlying conspiracy to defraud the IRS conviction and the obstruction of justice enhancement were not based on the same conduct, the district court did not err in applying a two-level enhancement pursuant to U.S.S.G. § 3C1.1.

Samantha De Tommaso appeals her conviction and five month sentence for tampering with a witness, 18 U.S.C. § 1512(b)(2)(B). On appeal, De Tommaso first argues that the indictment in this case was defective because it failed to identify the official proceeding that her alleged misconduct was intended to obstruct. De Tommaso argues that due to this defective indictment, she was not aware of which "official proceeding" was at issue. As such, this failure denied her adequate notice of the charge against her and deprived her of a fair opportunity to prepare her defense. De Tommaso also argues that since the indictment was defective, the trial court did not have proper jurisdiction to hear the case.

We review a challenge to the sufficiency of the indictment *de novo*. *United States v. Shotts*, 145 F.3d 1289, 1293 (11th Cir. 1998), *cert. denied*, 525 U.S. 1177 (1999). Federal Rule of Criminal Procedure 7(c)(1) requires that an indictment "be a plain, concise and definite written statement of the essential facts constituting the offense charged." Fed.R.Crim.P. 7(c)(1). "It is generally sufficient that an indictment set forth the offense in the words of the statute itself, as long as 'those words of themselves fully, directly and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished.'" *United States v. Ramos*,

666 F.2d 469, 474 (11th Cir. 1982). An indictment need do little more than track the language of the statute charged to be sufficient. *United States v. Adkinson*, 135 F.3d 1363, 1375 n.37 (11th Cir. 1998).

In *United States v. Murphy*, 762 F.3d 1151, 1154 (1st Cir. 1985), a case which De Tommaso cites in his brief, the First Circuit held that the failure of an indictment to identify *any* proceeding in which defendants were allegedly attempting to influence a witness, rendered the indictment invalid. In *United States v. Shotts*, 145 F.3d at 1302, this Court cited *Murphy* for the proposition that "failure to identify *in any way* the official proceeding did not sufficiently apprize the defendants of charges. In *Shotts*, however, we upheld the indictment based on the fact that the official proceeding in question had been previously described in the introduction portion of the indictment. *Id.*

We conclude that, because the indictment described the official proceeding in question, the indictment was sufficient to apprize De Tommaso of the charges against her.

De Tommaso next argues that the district court erred in refusing to give her proposed jury instruction defining the word "persuasion", and instead giving an instruction which stated the law inaccurately as to that element of the offense. De Tommaso argues that without an instruction clarifying and highlighting the meaning of "persuasion", there was a substantial risk that the jury would adopt a more liberal, over-broad and incorrect construction. De Tommaso further argues that the district court erred in not giving her proposed instruction on "consciousness of innocence". According to De Tommaso, it was appropriate

to give the jury an instruction advising them that they could consider the fact that she did not flee the country as evidencing her "consciousness of innocence".

We review a district court's refusal to give a jury instruction requested by the defense for an abuse of discretion. *United States v. Westcott*, 83 F.3d 1354, 1357 (11th Cir.), *cert. denied*, 519 U.S. 908 (1996). The refusal to give a jury instruction "is reversible error if (1) the requested instruction was a correct statement of the law, (2) its subject matter was not substantially covered by other instructions, and (3) its subject matter dealt with an issue in the trial court that was so important that failure to give it seriously impaired the defendant's ability to defend himself." *United States v. Paradies*, 98 F.3d 1266, 1286 (11th Cir. 1996), *cert. denied*, 521 U.S. 1014 (1997).

We conclude that, because the district court's instruction on "corruptly persuades" covered De Tommaso's proposed instruction, and because De Tommaso did not show that her instruction was an accurate statement of the law, the district court did not err in refusing her instruction.

In her first sufficiency argument, De Tommaso argues that the district court erred in denying her motions for judgment of acquittal on the grounds that the evidence failed to prove the element of corrupt persuasion. According to De Tommaso, there was no evidence at trial that "even arguably established that De Tommaso's conduct rose to the level of 'persuasion', as opposed to mere solicitation." De Tommaso argues that the Compubras employees responsible for destroying the records were already predisposed toward the act and, therefore, it was impossible for her to "persuade" them.

We review a challenge to the sufficiency of the evidence *de novo*, viewing the evidence in the light most favorable to the government. *United States v. Calderon*, 127 F.3d 1314, 1324 (11th Cir. 1997), *cert. denied*, 522 U.S. 1133, 523 U.S. 1033, and 523 U.S. 1144 (1998). We accept all reasonable inferences which support the verdict, and will affirm the conviction if a reasonable trier of fact could conclude that the evidence establishes guilt beyond a reasonable doubt. *United States v. McDowell*, 250 F.3d 1354, 1364-65 (11th Cir. 2001) (citing *United States v. Mieres-Borges*, 919 F.2d 652, 656 (11th Cir. 1990) (quotation marks omitted)). Where the government's case is based on circumstantial evidence, "reasonable inferences, not mere speculation, must support the jury's verdict." *McDowell*, 250 F.3d at 1365. The credibility of witnesses should be resolved in favor of the jury's verdict. *United States v. Hollifield*, 870 F.2d 574, 577 (11th Cir. 1989).

We conclude that when the evidence is taken in the light most favorable to the government, the evidence was sufficient to prove, beyond a reasonable doubt, that De Tommaso was guilty of corruptly persuading others.

As her second sufficiency argument, De Tommaso argues that the evidence was insufficient because it was so incredible, unreliable and contradictory that no reasonable juror could have relied upon it. De Tommaso argues that the testimony of Machado and Carmen concerning the destruction of documents was completely contradictory and the differing timelines are irreconcilable. Finally, she argues that allowing a conviction based on this materially conflicting and irreconcilable testimony given by people with a motive to lie would undermine the criminal justice system.

In *Calderon*, we stated:

> It is well established that [c]redibility determinations are the exclusive province of the jury . . . For testimony of a government witness to be incredible as a matter of law, it must be unbelievable on its face. It must be testimony to facts that [the witness] physically could not have possibly observed or events that could not have occurred under the laws of nature. Further the fact that [the witness] has inconsistently lied in the past, engaged in criminal activities, [and] thought that his testimony would benefit him . . . does not make his testimony incredible.

Calderon, 127 F.3d at 1325 (internal citations and quotations omitted).

Because De Tommaso has failed to show that the testimony met the requirements of *Calderon*, it was not incredible as a matter of law.

Lastly, De Tommaso adopts the arguments advanced by her co-defendant, Martin. As addressed above, these arguments are without merit.

Having reviewed the record and after giving careful consideration to the issues raised, we find no reversible error. The convictions and sentences are affirmed.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-11847-CC

UNITED STATES OF AMERICA,

Plaintiff-Appellees,

versus

MARTHA DE LA CARIDAD MARTIN,
OTACILLIO ROCHA,
SAMANTHA DE TOMMASO FERREIRA,

Defendants-Appellants.

Appeals from the United States District Court for the Southern District of Florida

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(Filed Aug. 5, 2002)

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

(Opinion ___, 11th Cir., 19__, ___ F.2d ___).

Before: BLACK, CARNES and FAY, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35,

Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ _____
UNITED STATES CIRCUIT JUDGE